

<b>COMPLIANCE BOARD OPINION NO. 00-11</b>
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October 23, 2000

*Col. Richard A. Romer, USAF (Retired)*

The Open Meetings Compliance Board has considered your complaint that the Town Council of North Beach violated the Open Meetings Act by holding an improperly closed meeting on September 14, 2000. For the reasons stated below, the Compliance Board finds that the Act's procedural requirements were violated in certain respects.

**I**

**Complaint and Response**

Your complaint stated that, at the conclusion of the Town Council's regularly scheduled open meeting on September 14, Councilmember Chris Homan, who was presiding, "announced that the Council was going into executive session. No motion was introduced, seconded or passed by the Council to convene an executive session. No purpose was given for convening an executive session." Your complaint also stated that, according to another councilmember, in the closed session Councilmember Homan "appealed to the other members of the Council to provide their support" to Mark Frazer, the Mayor of North Beach, against whom certain allegations had been made.

In a timely response on behalf of the Town Council, Councilmember Homan, who presided at the September 14 meeting, stated as follows:

At the close of the meeting I publicly mentioned that the regular meeting would adjourn so the Council could meet in executive session. A vote was taken to adjourn and each member present signed [a] form authorizing an executive session. I was unaware of the requirement to make a specific vote to meet in executive session but there was a public announcement that we were going into executive session, a live vote was taken to adjourn the public meeting and go into executive session, and councilmembers unanimously signed the form. Our Town Attorney was not present and, as the enclosed

form indicates, no councilmember made any objection to holding an executive session. There was absolutely no intended omission or attempt to mislead the public or Council.

With respect to the substance of discussion at the closed session, Councilmember Homan denied that it was an effort to provide support to Mayor Frazer. Rather, according to Councilmember Homan, “I held the executive session pursuant to Section 10-508 [(a)](12) to discuss an investigative proceeding, specifically to provide the Council with its first update on the recent allegations against the Mayor. During the session I briefly brought the Council up to date on the recent effort to have Frazer investigated by the Special Prosecutor’s Office.... [T]he Council introduced no motions and no official actions were taken. Again, this was merely a conversation to update my fellow councilmembers on an investigation.

## **II**

### **Analysis**

This complaint raises two distinct issues: Did the Town Council have a proper basis under the Open Meetings Act to close the meeting on September 14? If so, did the Council follow the procedures prescribed by the Act for closing a meeting?

As Councilmember Homan’s response indicates, the Council closed the meeting on the basis of §10-508(a)(12) of the State Government Article, which authorizes a public body to meet in closed session or, as happened here, to adjourn an open session to a closed session in order to “conduct or discuss an investigative proceeding on actual or possible criminal conduct.” Although neither the complaint nor the response discusses the particulars of the allegations concerning Mayor Frazer, both letters refer to efforts to prompt an investigation by the State Prosecutor. Since that office conducts criminal investigations, we shall assume that the matter involving Mayor Frazer concerns “an investigative proceeding on actual or possible criminal conduct.” Furthermore, although the Town Council of North Beach obviously has no role in the conduct of any criminal investigation, the exception in §10-508(a)(12) permits a closed meeting not only to “conduct” but also to “discuss” an ongoing or possible criminal investigation. Hence, based on Councilmember Homan’s description of the nature of the discussion at the September 14 closed meeting, we conclude that the Town Council had a lawful basis to close the meeting.

The Council, however, did not fully comply with the Act's procedural requirements for closing the session. First, the Act requires the presiding officer to "conduct a recorded vote on the closing of the session." §10-508(d)(2)(i). This requirement, the Attorney General has advised, contemplates "a motion, properly seconded, to close the meeting. The motion should state the legal basis for the proposed closing." *Open Meetings Act Manual* 20 (4th. ed. 2000). The Town Council's approval of the motion to adjourn, coupled with the presiding officer's statement about an intention to hold a closed session, fell short of the Act's requirements for "a recorded vote on the closing of the session."

Second, the Act requires the presiding officer to "make a written statement of the reason for closing the meeting, including a citation of the authority under this section, and a listing of the topics to be discussed." §10-508(d)(2)(ii). The statement prepared by the presiding officer prior to the closed session on September 14 failed to state a reason for closing the meeting; failed to cite the authority for closing the meeting, because nothing was checked on a written list of the fourteen circumstances under which §10-508(a) allows a meeting to be closed; and failed to list the topics to be discussed.

### **III**

#### **Conclusion**

In summary, the Compliance Board finds that, although the Town Council of North Beach had a lawful basis for conducting a closed session on September 14, 2000, it violated the Act by failing to follow the procedural requirements for closing a session.

OPEN MEETINGS COMPLIANCE BOARD

*Walter Sondheim, Jr.*  
*Courtney McKeldin*  
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